

On January 30, 2006 appellant, then a 52-year-old management assistant, filed an occupational disease claim alleging that she developed depression and job-related stress due to a prior Equal Employment Opportunity (EEO) complaint, a command reorganization, downsizing and difficulty adjusting to a change in her work space. She also attributed her condition to her supervisor, a dress code and the inability to obtain the necessary tools to complete her assigned

work. Appellant first developed her condition on December 1, 2006 and first attributed the condition to her employment on December 14, 2005.

In a letter dated March 6, 2006, the Office requested additional factual and medical evidence in support of her claim. It allowed 30 days for a response. Appellant submitted narrative statements dated January 9 and April 6, 2006. She stated that she filed EEO complaints in 1998 and 2000 alleging racial discrimination as she was denied a promotion to management assistant, GS-7, on two occasions despite being the more qualified candidate. During the EEO process, Mr. Ward, a hiring official, discredited appellant's experience, belittled her, mocked her and called her a liar. Appellant was now uncomfortable in the presence of one of the promoted employees, Ms. Harris, a former friend.

Appellant also attributed her emotional condition to a 2003 request that she act as supply clerk. She stated that the function was not part of her job and that she felt demoted. Appellant also resented a 2004 proposed detail to the secretary's job. She refused the detail and stated that the employing establishment retaliated against her. Appellant filed a third EEO complaint. She withdrew her 2004 EEO complaint in September 2005 due to stress and depression leading to a lack of mental concentration. Appellant attributed her depression to the withdrawal of her complaint. She went on leave without pay from September to October 14, 2005. Appellant noted that, when she returned to work on October 14, 2005, the employing establishment had disabled her computer logon. She had to wait more than two hours before her logon was operational. Appellant contended that the employing establishment had not expected her to return to work and she became concerned that her position would be terminated.

On October 14, 2005 the employing establishment informed appellant that the command secretary had left her position and appellant became afraid that she would be forced to do the secretary's job. In October 2005, appellant was informed that the employing establishment was overstaffed and she became afraid that she would be required to order supplies, quit or be fired. She came to understand that her return to work following the leave without pay had prevented the employing establishment from hiring a secretary and that her position was slated to be terminated. Appellant felt pressured to resign when Wayne F. Prescott asked what her plans were.

Commander Benjamin D. Liam, appellant's supervisor, informed her that she would be relocated to the 14<sup>th</sup> floor. Appellant was uncomfortable moving to that location due to her prior EEO activities and felt she was being ostracized and discussed by members of the command suite. In November 2005, Commander Liam informed appellant that he wanted her to order supplies. Appellant stated, "I felt that supply function was way below my skill level and I was insulted by the attempt to get me to perform them." She noted that she did not have to perform these duties. Appellant stated that the request to do so made her feel singled out and punished. She noted that her office location was moved from the 15<sup>th</sup> to the 14<sup>th</sup> floor which caused her to feel uncomfortable. Appellant stated that coworkers were hostile and she felt alienated. She alleged that Lola Jones, a coworker, had sent her a profane, derogatory and cruel e-mail in 2004 and laughed and mocked her when she moved to the 14<sup>th</sup> floor in 2005. Appellant also noted that the dress code was more formal on the 14<sup>th</sup> floor. She stated that the supply cart was kept in her office which she felt was inappropriate.

Appellant began an equipment inventory in December 2005 and this assignment was to be completed in three weeks, which she felt was an unreasonable deadline. She also alleged that Commander Liam micromanaged her work. Appellant asserted that she was unable to obtain appropriate software and clearance to complete her task and that her coworkers failed to assist her. She was required to provide daily updates on her progress but did not have adequate training to complete the inventory as she was not familiar with the latest version of the equipment inventory software. Appellant stated that she had difficulty concentrating and difficulty completing the inventory in a timely manner. She submitted documentation regarding her EEO complaints.

The employing establishment responded to appellant's allegations on September 6, 2006. It submitted a series of e-mails from Commander Liam addressing her request for compensatory time and additional software. Commander Liam directed her to report her progress daily. Lieutenant M. Williams noted on January 17, 2006 that appellant submitted only one progress report dated December 8, 2005 regarding her inventory assignment.

Mr. Prescott submitted a statement on January 10, 2006. He was surprised that appellant had returned to work at the employing establishment following her October leave without pay. Mr. Prescott stated that appellant had informed him in August that her husband had moved to Georgia, that the family home had been sold. He stated that he held a meeting on November 3, 2005 and informed appellant and the other staff that the goal was 48 employees. Mr. Prescott denied stating that the employing establishment was overstaffed by one civilian.

In a report dated January 15, 2006, Dr. Maria C. Raciti, a licensed clinical psychologist, diagnosed depression and post-traumatic stress disorder due to appellant's work. In an April 5, 2006 report, she attributed appellant's diagnosed conditions of major depression and post-traumatic stress disorder to her EEO complaints. Appellant submitted additional medical documentation diagnosing job stress and depression.

The Office prepared a statement of accepted facts which found that appellant had established a compensable factor of employment, that she was required to conduct an inventory of the agency equipment in December 2005. It referred her for a second opinion on September 1, 2006. In a report dated October 22, 2006, Dr. Stuart Hudson, a Board-certified psychiatrist, examined appellant and provided his findings. He diagnosed major depressive disorder, recurrent, moderate to severe. Dr. Hudson stated that appellant's depression worsened significantly in December 2005 and that "the situation in December 2005 aggravated her symptoms." He found that appellant was currently totally disabled.

By decision dated February 26, 2007, the Office denied appellant's claim for an emotional condition finding that she had not substantiated a compensable employment factor.

Appellant requested reconsideration on September 13 and November 1, 2007. She contended that the Office did not address her allegation regarding her inability to complete the assigned inventory by the three-week deadline due to insufficient training and the delay in receiving the appropriate computer program. Appellant stated that two people were required to complete the inventory, but that she was required to perform this task by herself. In a report dated April 25, 2007, Dr. Raciti stated that appellant's medical condition was directly related to

work she performed on the property inventory. She stated that appellant was “left with the unrealistic pressure of completing the inventory in an unreasonable amount of time.” Dr. Raciti diagnosed major depressive disorder, anxiety disorder and post-traumatic stress disorder.

In a statement dated December 27, 2007, Commander Liam characterized the inventory project assignment to appellant as “fairly easy.” He denied appellant’s claimed lack of assistance. Commander Liam stated that inventory did not require two persons. He stated that in the two weeks that she was supposed to conduct the inventory, appellant did not produce any coherent result. Commander Liam stated that her need for the computer program was critical only in the later stage of the inventory process. He stated that inventory was later assigned to another employee who completed the project in a week. Toni L. Turbide, a coworker, provided a statement on December 13, 2007. She provided appellant with inventory paperwork on December 5, 2005 and attempted to download the appropriate software for appellant from December 5 through 13, 2005 with no success.

Appellant responded to the employing establishment’s statements on January 16, 2008, reiterating her difficulty in obtaining the necessary tools and equipment to perform the inventory.

By decision dated February 6, 2008, the Office denied modification of its February 27, 2007 decision, finding that there were no compensable factors of employment.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee’s regular or specially assigned work duties, do not fall within the coverage of the Act.<sup>3</sup> While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>3</sup> *James E. Norris*, 52 ECAB 93, 100 (2000).

establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.<sup>4</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employees will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>5</sup>

The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>6</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>7</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>8</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>9</sup>

Grievances and EEO complaints by themselves do not establish that workplace harassment or unfair treatment occurred. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact of the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.<sup>10</sup>

### ANALYSIS

Appellant attributed her emotional condition to administrative actions of the employing establishment and her supervisor including the denial of promotions, the alteration of her office location and the fact that her computer log-on was disabled. She has not submitted sufficient

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<sup>4</sup> *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

<sup>5</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>6</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>7</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

<sup>8</sup> *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

<sup>9</sup> *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

<sup>10</sup> *David C. Lindsey*, 56 ECAB 263 (2005).

evidence to establish error or abuse on the part of the employing establishment in these actions. The Office properly found that these actions did not constitute compensable employment factors.

In listing the causes of her emotional condition, appellant stated that she feared that her job would be eliminated or that she would be fired. The Board has held that a claimant's feelings of job insecurity are self-generated and do not constitute a compensable factor under the Act.<sup>11</sup>

Appellant alleged that her emotional condition was due to pursuing EEO claims following the denial of promotions. The pursuit of an EEO claim does not arise in the performance of duty as the processing of an EEO claim bears no relation to a claimant's day-to-day or specially assigned duties.<sup>12</sup> Appellant also alleged that she was subjected to discrimination and retaliation through the denial of promotions. However, she has failed to submit factual evidence substantiating her allegations of discrimination and retaliation. Appellant's mere perceptions of discrimination are not sufficient to establish this compensable factor of employment.

Appellant also attributed her emotional condition to the requirement that she complete an equipment inventory. Her supervisor, Commander Liam, corroborated that appellant was assigned this task and agreed that appellant failed to complete it in a timely manner. A coworker, Ms. Turbide, confirmed that appellant had difficulties obtaining the computer access necessary to complete this task. The Board finds that appellant has established a compensable employment factor under *Cutler*. Therefore, the Office must consider medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.<sup>13</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

### **CONCLUSION**

The Board finds that appellant has established a compensable factor of employment under *Cutler*. Appellant did not establish her allegations of discrimination or administrative error. On remand, the Office should develop the medical evidence and issue an appropriate decision.

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<sup>11</sup> *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

<sup>12</sup> *Hasty P. Foreman*, 54 ECAB 427 (2003).

<sup>13</sup> *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed in part, and set aside, in part. The case is remanded for further development consistent with this decision of the Board.

Issued: November 14, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board